



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1998

Mr. Dan Fontaine
Chief Legal Officer
M.D. Anderson Cancer Center
Texas Medical Center
1515 Holcombe Boulevard
Houston, Texas 77030

OR98-1934

Dear Mr. Fontaine:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117270.

The University of Texas M.D. Anderson Cancer Center (hereinafter "UTMDACC") has received a request for a copy of the "Sponsored Research and Collaboration Agreement" (hereinafter "the agreement") between UTMDACC and Millennium Pharmaceuticals, Inc. (hereinafter "Millennium"), dated April 20, 1998. The agreement contemplates collaboration on certain research projects between Millennium and UTMDACC. UTMDACC does not take a position on the release of the requested information. However, Millennium submits under section 552.305 of the act objections to the release of portions of the agreement, contending that they are protected from public disclosure under section 552.110.

Section 552.110 excepts from required public disclosure

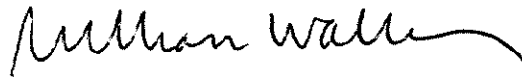
[a] trade secret or commercial or financial information
obtained from a person and privileged or confidential by statute or
judicial decision.

Section 552.110 protects two categories of information: 1) trade secrets and 2) commercial or financial information. Millennium generally alleges that certain information in the agreement -- the composition of the steering committee which will oversee the research projects under the agreement, pricing and budgetary information, research plans -- constitutes "proprietary and trade secret information" (Millennium brief, p.2) or information "which the Company maintains as trade secret and/or regards as proprietary" (*Id.* p.4).

In our opinion, Millennium fails to show how the information at issue meets the specific tests developed by the authorities and this office for either "trade secrets" or "commercial or financial information" within the section 552.110 exception. For definition of "trade secret," see RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added); *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980); 232 (1979); 217 (1978). For six factors to be considered in determining whether information is "trade secret," see RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). *See also*, Open Records Decision No. 552 (1990) at 5 (this office's acceptance of prima facie case for "trade secret" exemption). For test for confidentiality of "commercial or financial information," see *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); *AT&T Information Systems, Inc. v. General Services Administration*, 627 F. Supp. 1396, 1403 (D.D.C. 1986), *rev'd on other grounds*, 810 F.2d 1233 (D.C. Cir. 1987); *Gulf and Western Industries v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979); Open Records Decision No. 639 (1996). Again, we find that Millennium has not sufficiently shown that the information at issue is within the section 552.110 exception to disclosure. The requested agreement must therefore be released in its entirety.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/KHH/ch

Ref.: ID# 117270

Enclosures: Submitted documents

cc: Mr. Rodney Varner
Wilson & Varner
301 Congress Ave., Suite 2025
Austin, Texas 78701
(w/o enclosures)